

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TWENTY-FIRST CENTURY FOX, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and the UNITED STATES OF AMERICA,

Respondents.

No. 16-1324

PETITIONER’S STATEMENT OF ISSUES

Pursuant to the Court’s order of September 21, 2016, Twenty-First Century Fox, Inc. (“Petitioner”) hereby submits the following non-binding statement of issues to be raised in the Court’s review of Order FCC 16-116, released by the Federal Communications Commission (“FCC”) on September 6, 2016, in FCC Docket No. 13-236 (the “Order”).

This appeal involves the national audience reach limitation, an FCC rule which restricts the percentage of U.S. households that a single company can serve through ownership of commercial television broadcast stations. As part of the Telecommunications Act of 1996, Congress directed the FCC to set the national audience reach limitation at 35 percent. *See* Telecommunications Act of 1996, Pub. L. No. 104-04, § 202(c)(1)(B), 110 Stat. 56, 111 (1996). Congress later

increased this cap to 39 percent, *see* Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004), where it remains today.

Each time Congress modified the national audience reach limitation, it did so by instructing the FCC to amend its regulations implementing this cap. At the time Congress acted to codify the cap in 1996 and, again, in 2004, the FCC's regulations provided that for purposes of calculating a company's audience reach, the audience reach of a television station broadcasting in the UHF frequency band should be discounted 50 percent. *See* 47 C.F.R. § 73.3555(e)(2). Thus, in setting the national audience reach cap, Congress was well aware that this "UHF discount" played a critical role in determining how a company's national audience reach would be calculated.

By a 3-2 vote, the Commission approved the Order and eliminated the UHF discount. The Commission's decision to eliminate the UHF discount overrides Congress's decision to set the national audience reach limitation at 39 percent and effectively caps a company's ownership of television stations at a level below what Congress directed. Companies that relied on the UHF discount to remain comfortably below the Congressionally enacted 39 percent threshold now are prevented from acquiring new television stations. The Commission reached this decision to tighten an ownership restriction without considering whether—in an age where the media distribution landscape has changed dramatically and no

longer is dominated by broadcast television—the national audience cap itself should be relaxed or eliminated entirely.

This appeal therefore involves the following issues:

(1) Whether the FCC acted arbitrarily, capriciously, or otherwise not in accordance with law in holding that the FCC has the authority to effectively reduce the national audience reach limitation below the statutorily mandated 39 percent threshold by eliminating the longstanding 50 percent “UHF Discount” for stations broadcasting on UHF channels.

(2) Whether the FCC acted arbitrarily, capriciously, or otherwise not in accordance with law by effectively reducing the national audience reach limitation without considering arguments that the limitation should be relaxed or eliminated.

(3) Petitioner reserves the right to raise additional issues as the briefing in this cases progresses.

Dated: October 21, 2016

Respectfully submitted,

/s/ Mace Rosenstein

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2016, the foregoing Statement of Issues has been electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Mace Rosenstein

Mace Rosenstein